

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSIAH KUENZI	:	CIVIL ACTION
	:	
v.	:	
	:	
EUROSPORT CYCLES, INC., et al	:	NO. 08-3906

ORDER

AND NOW, this 30th day of November, 2010, upon consideration of defendant's motion for leave to amend its answer and affirmative defenses and plaintiff's response thereto, it is ORDERED that defendant's motion is GRANTED.¹ Defendant's Amended Answer shall be deemed filed as of the date of this Order. In accordance with Rule 12(a)(1)(B) of the Federal Rules of Civil Procedure, plaintiff shall serve his answer to defendant's counterclaims within 21 days from the date of this Order.

¹ "[L]eave shall be freely given [for a party to amend its pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). "The liberal right to amend applies equally to complaints and answers." BDB & Sons Moving, Inc. v. Transguard Ins. Co., No. 08-3465, 2010 WL 4659155, at *2 (E.D. Pa. Nov. 16, 2010). Plaintiff argues that defendant "has not asserted 'good cause'" in support of its motion to amend. Rule 16 of the Federal Rules of Civil Procedure, which provides that a court's scheduling order "may be modified only for good cause and with the judge's consent," Fed. R. Civ. P. 16(b)(4), "was not intended to function as an inflexible straightjacket on the conduct of litigation . . . instead, it was intended to insure the efficient resolution of cases and, most importantly, minimize prejudicial surprise." Morton Int'l, Inc. v. A.E. Staley Mfg. Co., 343 F.3d 669, 684 (3d Cir. 2003), quoting Lamborn v. Dittmer, 873 F.2d 522, 527 (2d Cir.1989). In his opposition to defendant's motion for leave to amend, plaintiff has not established that he would be "unfairly disadvantaged or deprived of the opportunity to present facts or evidence which [he] would have offered had the amendments been timely." BDB & Sons, 2010 WL 4659155, at *3 quoting Heyl v. Patterson Int'l, Inc. v. F.D. Rich Housing of V.I., Inc., 663 F.2d 419, 426 (3d Cir. 1981). The counterclaims that defendant seeks leave to plead require an application of law to facts that have already been discovered regarding the contractual relationship between plaintiff and defendant.

It is further ORDERED that defendant's second motion for summary judgment is denied as moot. Dispositive motions, if any, shall be filed within 14 days after plaintiff serves his answer to defendant's counterclaims. Reply briefs, if any, may be filed within 7 days thereafter.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.